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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/977,374	11/24/1997	WILLIAM J. BAKKER	GLP006/JTN	3062

7590 11/18/2002  
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EXAMINER

WATKINS III, WILLIAM P

ART UNIT	PAPER NUMBER
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1772

32

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicant(s)

08/977,374

Applicant(s)

BAKKER, WILLIAM J.

Examiner

William P. Watkins III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09-12-02 and interview of 11-13-02.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9,21-23,26 and 36-46 is/are pending in the application.
- 4a) Of the above claim(s) 1-9,21-23 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-46 is/are rejected.
- 7) ☒ Claim(s) 36 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☒ Interview Summary (PTO-413) Paper No(s). 31.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.                      6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. The request filed on 12 September 2002 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/977,374 is acceptable and a CPA has been established. An action on the CPA follows.

2. Claim 36 is objected to because of the following informalities: in claim 36 in the amendment filed 01 March 1999, line 12, after the phrase "to transfer heat to" the phrase -- said downwardly extending portion upon-- needs to be inserted. This phrase was inadvertently deleted by applicant between the March 1, 1999 and Nov. 6, 1998 amendments. Appropriate correction is required.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 36-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heilman et al. (Australia 27,337) in view of Konger (U.S. 3,760,154) further in view of Anderson et al. (U.S. 5,113,479).

Heilman et al. teach a film which extends over the rim of a container and is heat shrunk onto the container by applying energy which may be in the form of infrared radiation to the edge first while the top is shielded, then to the top as an option to further tighten the film (page 10). The film may be transparent (page 3). Konger teaches the use of infrared radiant heat directly on the overhanging edge of a transparent shrink wrap film in order to form a cover over an object to be packaged, the direct radiation on the edge is intense (abstract, col. 2, lines 35-45, col. 6, lines 60-69, col. 10, lines 15-25). Anderson et al. teach the use of coloring on an edge to better absorb infrared radiation to raise the temperature to heat seal the edge of the film (abstract). The instant invention claims a printed area on the edge rim of a film lid to better absorb radiation in order to heat shrink the film. It would have been obvious to one of ordinary skill in the art to direct the infrared radiation of Heilman et al. directly on the edge of Heilman et al. in order to better shrink the transparent edge of Heilman et al. because of the teachings of Konger to use intense

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direct radiation on overhanging edges to be shrunk. It further would have been obvious to color the edge of the film of Heilman et al. in view of Konger in order to use less intense infrared energy but still cause shrinking in order to save energy because of the teachings of Anderson et al. that use of opaque areas increase absorbance of infrared radiation. Use of film in a roll to make lids and printing and use of tint to create opaque areas for infrared absorption are conventional.

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 36-46 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 15, 16 and 19 of U.S. Patent

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5,993,942 . Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims differ only in the language used to describe the same structure.

7. Applicant's arguments in the Appeal Brief, filed 12 May 2000 have been fully considered but they are not persuasive for the reasons given in the examiner's answer mailed 19 June 2000.

In the interview on 13 November 2002, applicant repeated arguments regarding Konger not teaching direct infrared heating of the skirt portion of the cover of Konger. Applicant was asked to supply evidence that only indirect heating was being used in Konger. The instant action is non-final in order to allow time for such evidence to be prepared.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 703-308-2420. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.

A handwritten signature in black ink, reading "William P. Watkins III". The signature is written in a cursive style with a large, stylized "W" and "I".

WW/ww

November 17, 2002

**WILLIAM P. WATKINS III  
PRIMARY EXAMINER**